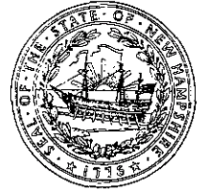




State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-3503 FAX (603) 271-2867



April 23, 2003

Mr. Ken Magdziarz
31 Jacob Avenue
Hooksett, NH 03106

Re: Docket No. AF 03-006 - Administrative Fine by Consent Agreement

Dear Mr. Magdziarz:

Enclosed for your records is a copy of the Administrative Fine by Consent Agreement in this matter executed by Pamela G. Monroe, Compliance Bureau Administrator of the Air Resources Division, and accepted by Acting Commissioner Robert Monaco on April 22, 2003. On behalf of the Department of Environmental Services, thank you for your cooperation in resolving this matter.

Sincerely,

COPY
Michael Clafani,
Legal Assistant

cc: Pamela G. Monroe, Air Resources Division
Gretchen Rule, DES Legal Unit
Susan Weiss Alexant, Hearings and Rules Attorney
Mark R. Harbaugh, DES Legal Unit
R. Kurowski, EPA Region I
Town Council, Town of Hooksett



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-1370 FAX (603) 271-1381



Mr. Ken Magdziarz
31 Jacob Avenue
Hooksett, New Hampshire 03106

ADMINISTRATIVE FINE
BY CONSENT

No. AF 03-006

I. INTRODUCTION

This Administrative Fine by Consent is entered into by and between the Department of Environmental Services, Air Resources Division, and Mr. Ken Magdziarz pursuant to RSA 125-C:15,I-b. This Administrative Fine by Consent is effective upon signature by all parties.

II. PARTIES

1. The Department of Environmental Services, Air Resources Division ("DES") is a duly constituted administrative agency of the State of New Hampshire, having its main office at 6 Hazen Drive, Concord, NH 03302-0095.
2. Ken Magdziarz is an individual having a mailing address of 31 Jacob Avenue, Hooksett, NH 03106.

III. BACKGROUND

1. RSA 125-C authorizes DES to regulate sources of air pollution. RSA 125-C:4 authorizes the Commissioner of DES to adopt rules relative to the prevention, control, abatement, and limitation of air pollution in New Hampshire. Pursuant to this authority, the Commissioner has adopted N.H. Admin. Rules Env-A 100 *et seq.*
2. RSA 125-C:15,I-b(b) authorizes the Commissioner to impose administrative fines of up to \$2,000 per offense for violations of any rule adopted pursuant to RSA 125-C.
3. RSA 125-C:6, VII authorizes DES personnel to enter "at all reasonable times in or upon any private or public property, except private residences, for the purpose of inspecting or investigating any condition which is believed or be either an air pollution source or in violation of any rules or orders promulgated hereunder".
4. Env-A 1001.03 allows only certain open burning without authorization from DES. Specifically, Env-A 1001.03(c)(4) allows the burning of untreated wood from the construction or demolition of a building, provided that such burning shall be done in an area, which shall be specified and approved by officials having jurisdiction over open burning.
5. Env-A 101.54 defines "brush" as tree tops, limbs, saplings and tree cuttings that are five inches in diameter or less.

6. Env-A 101.286 defines "untreated wood" as any timber, board or sawn dimensional lumber, which has not been treated, coated or preserved.
7. Env-A 1001.05 provides that no tires, tubes, or any portion thereof shall be burned in the ambient air at any place in NH for any reason.
8. Ken Magdziarz is the owner of property located at 31 Jacob Avenue, Hooksett NH (the "Property").

IV. ALLEGATIONS

1. On December 10, 2002, the Hooksett Fire Department ("HFD") called DES and reported that a 20' x 24' two-story wood frame storage shed located at the Property was set on fire this date by the owner, Ken Magdziarz. Mr. Magdziarz told fire officials at the scene that he did not know that he could not burn his shed. HFD reported seeing tarpaper, tires and other non-conforming materials inside the burned shed.
2. On December 10, 2002, DES personnel arrived at the Property and met with representatives of the HFD and Mr. Magdziarz. The DES inspector observed and took photographs of the smoking remains of the shed, and the following charred materials: a seat from an automobile, tires, plywood, particleboard, and shingles. DES personnel observed in the shed foundation, but not burned, two 5-gallon pails of used oil, one 1-gallon fill pan quarter full of used oil, ten used oil filters, and one 30-gallon poly drum of used oil.
3. On December 10, 2002, Mr. Magdziarz told DES personnel that the roof of his two-story shed had caved in several years ago, that more than half of the exterior walls had since been removed from the shed, and that he had been taking loads of debris from the shed to the town transfer station for disposal, but that "he got lazy" and attempted to finish the disposal by burning the shed. Mr. Magdziarz also stated that he had started the fire by using combustible liquids as an accelerant. The inspector explained to Mr. Magdziarz the types of material that can legally be burned, and suggested proper disposal of the charred remains.
4. Mr. Magdziarz violated Env-A 1001.03(c)(4) by burning non-conforming materials on the Property on December 10, 2002.
5. Mr. Magdziarz violated Env-A 1001.05(a) by burning tires on the Property on December 10, 2002.

V. ADMINISTRATIVE FINES, PAYMENT, WAIVER OF HEARING

1. DES has determined the violation identified in IV. 4, above, to be a moderate deviation from the requirements with moderate potential for harm. RSA 125-C:15, I-b specifies a fine range of \$851 to \$1,500. DES is seeking a fine of \$900 for this violation.
2. DES has determined the violation identified in IV. 5, above, to be a moderate deviation from the requirements with moderate potential for harm. RSA 125-C:15, I-b specifies a fine range of \$851 to \$1,500. DES is not seeking a fine for this violation at this time.

3. DES has determined that the violation was a one-time occurrence; Mr. Magdziarz has no history of non compliance with statutes or rules implemented by DES and Mr. Magdziarz has shown good faith in his dealings with DES since the violation occurred. Based upon these circumstances, a 30% reduction should be applied. DES is thus seeking a fine of \$630.
4. Mr. Magdziarz agrees to pay the amount of \$630 upon execution of this Administrative Fine by Consent.
5. Payment under paragraph 4. shall be made by certified check made payable to: "Treasurer, State of New Hampshire" and mailed to:

DES Legal Unit
Attn: Michael Sclafani
PO Box 95
Concord, NH 03302-0095
6. If any payment is made by check or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the check or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to the amount of the check or money order, to cover the costs of collection.
7. By executing this Administrative Fine by Consent, Mr. Magdziarz waives his right to a hearing on or any appeal of the administrative fines identified in Paragraph number 1, and agrees that this Administrative Fine by Consent may be entered into and enforced by a court of competent jurisdiction.
8. The effective date of this Administrative Fine by Consent will be the date on which Mr. Magdziarz, the Compliance Bureau Administrator of the Air Resources Division and the Commissioner of DES, signs it.
9. No failure by DES to enforce any provision of this Administrative Fine by Consent after any breach or default shall be deemed a waiver of its rights with regard to that breach or default, nor shall such failure be construed as a waiver of the right to enforce each and all of the provisions of this agreement on any further breach or default.

COPY

Ken Magdziarz

Date: 4-18-03

Department of Environmental Services

COPY

Pamela G. Monroe,
Compliance Bureau Administrator
Air Resources Division

Date: 4/21/03

COPY

Robert Monaco
Acting Commissioner
Department of Environmental Services

Date: 4-22-03

cc: M. Harbaugh, DES Legal Unit
R. Kurowski, EPA Region 1
Town Council, Town of Hooksett
AFS # 330139777